

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA
(ARUSHA DISTRICT REGISTRY)

AT ARUSHA

MISC. APPLICATION NO. 109 OF 2019

(Originating from Arusha Civil Appeal No. 40 of 2016)

EVATHA MICHAEL MOSHA APPLICANT

VERSUS

ELIAS PALLANGYO 1ST RESPONDENT

SILAS MFANGAVO 2ND RESPONDENT

SHALOM SACCOS 3RD RESPONDENT

RULING OF THE COURT

Last order.....16/06/2020

Ruling delivered..20/07/2020

GWAE, J

This court (Moshi, J) when exercising its appellate jurisdiction through Civil Appeal No. 40 of 2016 duly filed by the applicant, **Evatha Michael Mosha** delivered its judgment on the 17th March 2017. The applicant's appeal was against the 3rd respondent, **Shalom Saccos** being only respondent in that appeal. In its final analysis of the applicant's grounds of appeal, the court held and I quote;

"The issue is whether the Society can refer the dispute to the Court. Reading through the law, it is obvious that the internal mechanism has to be exhausted first, see section 94 (2), 95 (1) (4) of the Act.....By law article 60 (a), it is obvious that the dispute between members of the society or person so claiming, and the Board or officer or between one



society and another shall be referred to the Registrar of the Cooperative Societies.

That said, I find that all three grounds of appeal have merits. The proceedings and judgment of the Resident Magistrates' Court are quashed and decree and orders are set aside. The appeal is allowed. Costs to be paid by the respondent. It is so ordered".

This applicant's appeal having been determined by the court in her favour as depicted herein above , the applicant has knocked the doors of this court seeking issuance of a the court order directing the respondents to show cause as to why they should not be sent to the prison as civil prisoners for disobedience of law order, court order.

This application is brought under section 95 of the Civil Procedure Code, Cap 33, Revised Edition, 2002 and it is supported by her sworn affidavit which is to the effect that, the respondents are not willing to comply with the court order directing them to refer the dispute to the Registrar of Societies, instead they are threatening to auction her house.

On other hand, the respondents in their respective counter affidavit seriously commonly resisted this application by stating that they have never been served with the court decree. Exceptionally the 3rd respondent averred that he was permitted by the Registrar of SACCOS to sale the applicant's properties whilst the 1st and 2nd respondent strongly stated that they were not parties to the former proceedings.

On 29th day of April 2020 this application was called on for hearing, the applicant sought and was granted leave to argue her application by way of written submission. The applicant's written submission is no other than expounding of what is contained in her affidavit whereas the respondents in their written submission added that, they had not disobeyed any order

of the court as the judgment of the court did not prohibit the respondents from taking necessary action (s) provided by the law and that the applicant had not proved where, how and when the respondents disobeyed the court order.

Looking at the substance of this court judgment dated 17th March 2017, I do not find any order prohibiting the 3rd respondent or any other person acting in her behalf from taking any further action as rightly submitted by the respondents' counsel except that, the proceedings and judgment of the Court of the Resident Magistrates were quashed and set aside for being prematurely filed. The applicant's allegations that, the respondents are threatening to sell the mortgaged house, to my considered view, sale of mortgaged property or otherwise is not within the ambit of the essence of the decision of this court. Thus the respondents cannot be said to have complied with the court order.

More so the judgment of the court and its decree only entitle the applicant to costs of her appeal. The order as costs is executable by this court by filing an application for bills of costs and above all nowhere the applicant has established that the respondents' disobeyed the court order since no proof that the respondents insisted to have the judgment and decree of the Resident Magistrates' Court enforced. Had it been so, the respondent would have been found liable of disobedience of the court order.

Similarly, the applicant has failed to demonstrate that, the respondents violated any court's order in respect of this court decision neither through her affidavit nor in her written submission. In this situation, I am therefore not prepared or justified to accept the applicant's invitation to hold that the respondents disobeyed any lawful order in respect of this court's judgment delivered on the 17th day of March 2017 as the same neither restrained the

respondents from disposing the applicant's property nor did it prohibit the respondents from taking any other step provided by the law or to enforce their bilateral agreement.

In the light of the above, this matter is dismissed for lack of merit. The applicant shall bear costs of this application as the same is found to be frivolous and vexatious.

It is so ordered




M.R.GWAE
JUDGE
20/07/2020